

10-20-2015

# 2015 Esther Clark Moot Court Competition: Finals

Roger Williams University School of Law

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The Moot Court Board respectfully requests  
the honor of your presence at

**The Final Argument of the  
20<sup>th</sup> Annual Esther Clark Moot Court Competition**



**Katherine Berling, *Appellant***

**v.**



**Lindsay Langella, *Appellee***

To be heard by the  
Rhode Island Supreme Court

**Tuesday, October 20, 2015 | 5:30pm**

and held at the

Rhode Island Supreme Court  
250 Benefit Street  
Providence, Rhode Island

*Reception at the Brown Faculty Club to Follow*



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# **2015 ESTHER CLARK MOOT COURT COMPETITION**

***Finals***  
***Tuesday, October 20, 2015***

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**REEF Q. SILVER,  
APPELLANT,  
v.  
MEYER BLOOMBERG AND KAYMOND RELLY,  
APPELLEES.**

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**ORAL ARGUMENT TO BE PRESENTED  
BY THE FINALISTS:**

**KATHERINE BERLING,  
ON BEHALF OF THE APPELLANT  
v.  
LINDSAY LANGELLA,  
ON BEHALF OF THE APPELLEES**



## ACKNOWLEDGMENTS

### **The Distinguished Judiciary:**

The Law School and Board thank the Rhode Island Supreme Court for their unwavering support of the Moot Court Program.

Chief Justice Paul A. Suttell  
Justice Maureen M. Goldberg  
Justice Francis X. Flaherty  
Justice Gilbert V. Indeglia  
Justice William P. Robinson III

### **Brief Judges and Facilitators:**

**Dean Yelnosky and Dean Hassel**, our sincerest appreciation for your continued support of the Moot Court Board and its efforts to represent Roger Williams University School of Law on the national stage.

**Professor Jared Goldstein**, our fearless leader, as always, thank you for your support and guidance. **Angie Cooper**, thank you for your support this year. You are a wonderful addition to Moot Court and we are certain you will fill Professor Goldstein's shoes effortlessly.

**Heather Bernier**, words cannot express our gratitude for all that you do. You are without a doubt, the single, most important reason this competition runs as smoothly and successfully as it does.

**Brief Judges:** A very special thank you to **Dean Yelnosky, Professors Logan, Milonas, Horwitz, Colt, Kogan and Allen, Brett Beaubien, William Burnham, Edward Pare, and Sarah Driscoll** for their valuable time spent grading briefs.

**Oral Argument Judges**, your time and effort make the Esther Clark competition possible.

**Chelsie Horne**, thank you for organizing and planning this event, your effort makes this competition possible.



## DESCRIPTION OF THE CASE:

On August 18, 2013, while the Appellant, surfing enthusiast and blogger, was out surfing with his friends, ZY Sea PD had been alerted to a string of residential break-ins in the area and received a description of the suspects. After leaving a local restaurant on his bicycle, Appellant was stopped by Appellees for a bike code violation. During the encounter, Appellant began recording the encounter; however, due to the inherent danger of traffic stops and the fact that the Appellant was a potential suspect, Appellees asked Appellant to stop recording. Appellant complied and received a traffic infraction. Later that evening, Appellant realized that his phone recorded the entire encounter. Two days later, Appellant posted the footage on his blog. Roughly, one week after the posting and after catching wind of several news stories denigrating the entire police department, Appellees arrested Appellant and charged him with one count of violating ZY Statute § 943.03.

**Whether, for purposes of establishing a § 1983 civil rights claim in a First Amendment action, state law enforcement officers can lawfully instruct a citizen to cease recording an encounter with police and legally punish the dissemination of such an encounter, or whether such conduct violates the United States Constitution.**

**Yes. State law enforcement officers cannot lawfully instruct a citizen to cease recording an encounter with police nor legally punish the dissemination of such an encounter.**

There is an unfettered right to record the police and disseminate under the First Amendment. Though circuits are split, authority leans toward the existence of a qualified right. Moreover, to the extent that there is only a qualified right, this right was violated given that the police's restriction on his recording was not a "reasonable time, place, and manner restriction." Therefore, there is no qualified immunity defense because such a right is clearly established and the Appellees were on notice that their conduct would constitute a violation of the right to record police.

**No. State law enforcement officers can lawfully instruct a citizen to cease recording an encounter with police and legally punish the dissemination of such an encounter.**

There is no unfettered right to record under the First Amendment and case law is inconclusive. No case in the Fourteenth Circuit (this jurisdiction) has ever found such a right exists. To the extent that there is a qualified right, the police conduct in this scenario constituted a reasonable restriction on the Appellant's ability to record. In the alternative, should the Court find the existence of a constitutional right, the Appellees are protected under qualified immunity given that there was not a clearly established right in this jurisdiction and that they were not placed on proper notice that such a right exists and that their conduct would be a violation of such a right.



## THE MOOT COURT ORGANIZATION

### **Inducted in 2014:**

Mikéla Almeida, *President*  
Daniel Sagan, *Vice President*  
Kyla Pecchia, *Director of Communications*  
Edward Pare, *Chair of Finance and Development*

Mangelin Acevedo  
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Hannah Mowry  
David Thomas Peterson  
Celine Rivera  
John Ryan-Henry

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Katherine Berling  
Nicholas Barone  
Sean Carney  
Caroline Dias  
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Lindsay Langella

Brittani Mulholland  
Sharon Onga  
Laura Pickering  
Dave Revens  
Alexandria Richard  
Linda Tappa  
Christie Theodore

### ABOUT THE COMPETITION:

The Esther Clark Competition is an intra-school appellate advocacy competition for new Moot Court Board Members. This year, fifteen competitors individually prepared an appellate brief and conducted oral arguments before panels of attorneys. At the conclusion of the Competition, awards are presented to the winner, finalist, and author of the best-brief.

The Moot Court Board would like to thank the late Mr. John Clark for his continued support to this Competition, named to honor the memory of his wife, a deeply respected member of the RWU Law faculty, Professor Esther Clark.



Please join the Moot Court Board in congratulating **Katherine Berling** for winning this year's Esther Clark Competition! Katherine and fellow finalist **Lindsay Langella** argued a constitutional law issue before the Rhode Island Supreme Court. Their audience included a number of faculty members, attorneys, and classmates.

**Dave Revens** took home the prize for Best Brief. In addition to Dave, Lindsay, and Katherine, the following 12 students of the 2L class were inducted into the board after successfully completing the competition:

Arianna Baker  
Nicholas Barone  
Sean Carney  
Caroline Dias  
Amanda Jacober  
Jamison Jedziniak  
Brittani Mulholland  
Sharon Onga  
Laura Pickering  
Alexandria Richard  
Linda Tappa  
Christie Theodore

The Board would also like to thank Dean Yelnosky, Professor Jared Goldstein, Angie Cooper, and Heather Bernier for their unwavering support and their assistance in organizing this competition, as well as all of the faculty members who served as judges and brief graders. If you are a 1L interested in Moot Court, then we encourage you to try out in the Spring. A number of you will be chosen for the moot court board on the basis of your 1L Legal Methods brief and oral argument competition that is typically held in April.

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**Mikela Almeida**

Roger Williams University School of Law

Candidate for Juris Doctor, 2016

Moot Court Executive Board, President 2015-2016